

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5412 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GAJANAN MANSHANKER TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

MR BP TANNA for Petitioner
Mr Pujari, AGP for Respondent No. 1
MR JJ YAJNIK for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 18/02/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for an appropriate writ, direction or order quashing and setting aside the order passed by the Government at Annexure 'A' to the petition dated October 18 , 1994 and by granting

the petitioner all benefits on the basis that he was entitled to the post of supervisor with effect from June 10, 1963. He has also prayed for promotion to the post of Principal with effect from June 6, 1971 when junior to the petitioner came to be promoted to the said post and to pay all consequential benefits in terms of money.

The case of the petitioner was that he joined as a teacher in Chaudhari High School, Rajkot on March 23, 1946 run by Rajkot Kelavani Mandal. Government, by a resolution dated February 23, 1960, transferred Government secondary schools to private educational institutions and Chaudhari High School was handed over to Rajkot Kelavani Mandal. That was how, the petitioner became employee of Rajkot Kelvani Mandal. According to the assertion of the petitioner, he was senior most teacher in the school and hence, when the post of Head Master fell vacant, he was entitled to be appointed to the said post. Ignoring his legitimate claim to the said post, by an order dated June 10, 1963, one Mr. H.I. Hathi who was junior to him came to be appointed as Head Master. Various representations were made by the petitioner against the said order but no justice was done to his case. He, therefore, filed a civil suit in the court of Civil Judge (Senior Division) Rajkot which was dismissed on July 2, 1969, but a decree was passed as far as arrears of pay was concerned. First appeals were filed -one by Rajkot Kelevani Mandal and another by the petitioner and both the appeals were disposed of. Second appeals Nos. 282 and 283 of 1971 were filed by the Government as well as by the petitioner which came up for hearing before learned Single Judge of this Court (Coram: A.N.Surti, J.) on February 3, 1976. Both the appeals were disposed of and the petitioner was permitted to withdraw appeal as well as suit on a statement being made by the learned AGP on behalf of the authorities that the authorities will consider the grievance of the petitioner.

Relevant part of the observations made by the learned Single Judge in the above two appeals read as under :

"When both these appeals were called out for hearing and final disposal, Mr. M.R.Anand, the learned advocate appearing for Mr. C.T. Daru, made a statement at the bar that the plaintiff proposes to withdraw the suit which he had filed in the court of the Civil Judge (Senior Division) Rajkot being original civil suit No. 38 of 1968 if the authorities mentioned in the resolution

dated 23rd February 1960 (Ex. 53) are prepared to consider his grievances which he specifically stated in the plaint filed by him before the learned trial Judge. I accordingly asked the learned Asstt. Govt. Pleader Mr. M.B. Shah as to whether authorities mentioned in the said resolution are prepared to consider the grievance of the plaintiff as stated by him in the plaint and I am told that the officers are bound to take into consideration the grievances stated by the plaintiff in the plaint.

In view of what has been stated above, I direct the original plaintiff to file a necessary application before the concerned authority within a period of four weeks from today and I also direct the authorities mentioned in Ex. 53 to consider the grievances of the plaintiff as mentioned in that representation and the plaint filed by him in the court of the Civil Judge (Senior Division) Rajkot. I also request the authorities concerned to dispose of such representation within a period of two months after the authorities received the required representation from the plaintiff."

Thereafter, a representation was made which came to be rejected by the impugned order. In the impugned order, it was inter alia observed by the authorities that the petitioner had joined the private school and hence his case could not be considered by the Government authorities and there was no relationship of master and servant between the Government and the petitioner. It was also time barred. Another ground which weighed with the authorities was that at the relevant time, all teachers were asked to make applications for consideration of their cases for the post of Head Master. Since the petitioner had not made such application, there was no question to consider his case. It was, however, observed in the order itself that the petitioner did not make application as he had approached a competent court and the matter was sub-judice. The said order is challenged in the present petition.

I have heard Mr. B.P. Tanna, senior advocate of Tanna Associates and Mr. Pujari, learned AGP. Mr. Tanna submitted that in view of the order passed by the authorities, the action was illegal and contrary to law. In fact, the petitioner had succeeded before the courts below, but partly. He had filed second appeal.

Similarly , second appeal was also filed by the State authorities. When junior to the petitioner was promoted to the post of Head master, according to him, he was entitled not only to the post of Head Master but also consequential benefits . In the alternative, learned counsel submitted that the order passed by the Government at Annexure `A' deserves to be quashed and set aside in the light of the order passed by a Single Judge of this Court in second appeals. Drawing my attention to the observations made by the learned Single Judge in the above second appeals extracted hereinabove, he stated that when the learned Single Judge asked the then AGP as to whether the authorities were prepared to consider the grievance of the petitioner as mentioned in the plaint, the AGP stated that officers were bound to take into consideration the grievance of the petitioner. The counsel for the petitioner submitted that thereafter, it was not open to the authorities to reject the application and/or prayer on the ground that the petitioner was working in a private institute or that he had not made application or it was time barred. All those facts were very much before the Court hearing second appeals and in spite of that, statement was made by the AGP and direction was issued which ought to have been carried out.

In the facts and circumstances of the case, in my opinion, the petition deserves to be partly allowed. So far as the order passed in second appeals is concerned, it is explicitly clear. It was on the basis of the statement made by the then AGP that the case of the petitioner was, therefore, required to be considered when a direction was issued to consider his case and to take appropriate decision.

For the foregoing reasons, the appeal is partly allowed. Impugned order at Annexure `A' is quashed and set aside. It is directed that the authorities will comply with the direction issued by the learned Single Judge of this Court in Second Appeals Nos. 282 and 283 of 1971 decided on February 3, 1976 and consider the grievance of the petitioner and to pass appropriate order in accordance with law. Since the matter is very old and even second appeal was disposed of as early as in 1976 it is directed that the authorities will consider the case of the petitioner in accordance with law as to whether he was entitled to promotional post of Principal on the basis of averments made by him that a person junior to him came to be promoted overlooking and ignoring the legitimate claim of the petitioner, and if so, what consequential benefits should be allowed to him (vide State of Mysore and others

vs. Syed Mohmed and others, AIR 1968 SC 1123).

Since the direction is to consider the case of the petitioner, I express no opinion on merits of the matter and as and when the matter will be taken up for consideration, the authorities will consider and decide the same on its merits without being influenced by the observations made by me hereinabove. Authorities will decide the case on merits and will not take into account the factors such as limitation; the petitioner had not made an application or there was no relationship of master and servant between the Government and the petitioner. Such exercise will be undertaken as expeditiously as possible preferably within three months from the receipt of the writ. Rule is made absolute to the aforesaid extent. No order as to costs.

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parekh